Gould, Inc. *and* Communications Workers of America, AFL-CIO. Cases 39-CA-34 and 39-CA-176

February 10, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On December 31, 1980, Administrative Law Judge David S. Davidson issued the attached Decision in this proceeding and on January 9, 1981, issued an erratum thereto. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited cross-exceptions and a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[4]

AMENDED CONCLUSIONS OF LAW

Insert the following as Conclusion of Law 4:

"4. By issuing warnings to its employees for violating a rule prohibiting solicitation at any time on company property and by disparate enforcement of its rules, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Gould, Inc., Plantsville, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(c):

"(c) Issuing warnings to its employees for violating a rule prohibiting solicitation at any time on company property and disparately enforcing its rules."

2. Substitute the following for paragraph 2(b):

"(b) Rescind any rule prohibiting solicitation by employees at any time on company property."

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[1] Respondent excepts to the Administrative Law Judge's finding a violation based on certain allegations added to the complaint just prior to the hearing, contending that they were barred by Sec. 10(b) of the Act because no new charge had been filed to support them. We do not agree. Once a charge is filed the Board may deal with any related matters which arise out of the original events without a new charge being filed. *National Licorice Company* v. *N.L.R.B.*, 309 U.S. 350 (1940); *N.L.R.B.* v. *Fant Milling Co.*, 360 U.S. 301 (1959); *Spruce Up Corporation*, 194 NLRB 841 (1972); *Fern Laboratories, Inc.*, 240 NLRB 487 (1979).

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] We agree with the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(1) by threatening to eliminate its "open door" policy. Sec. 9(a) of the Act guarantees employees the right to present their problems directly to management for adjustment as long as a union representative is afforded the opportunity to be present and the adjustment is not contrary to the contract. By threatening to deny this right and to cut off all direct communication between management and the employees because of the Union, Respondent was seeking to penalize employees for the exercise of their statutory rights. *Graber Manufacturing Company, Inc.*, 158 NLRB 244 (1966), enfd. 382 F.2d 990 (7th Cir. 1967); *Winn-Dixie Stores, Inc. Tampa Division*, 166 NLRB 227 (1967), enfd. 414 F.2d 786 (5th Cir. 1969); *Omark-CCI, Inc.*, 208 NLRB 469 (1974); *Robbins & Myers, Inc.*, 241 NLRB 102, fn. 7 (1979); *Tipton Electric Company and Professional Furniture Company*, 242 NLRB 202 (1979), enfd. 621 F.2d 890 (8th Cir. 1980); *G. F. Business Equipment, Inc.*, 252 NLRB 866 (1980).

Respondent, however, relying on *TRW-United Greenfield Division*, 245 NLRB 1135 (1979), contends that its statements concerning loss of access to management were lawful as an accurate description of the typical functioning of a grievance procedure in a unionized situation. However, that case is distinguishable because it involved comment on the role of a steward under a union contract and there was some question whether an open-door policy actually existed. Here, to the contrary, the Administrative Law Judge specifically found that Respondent was not merely describing its understanding of a typical grievance procedure but was threatening a total cessation of all contacts between management and the employees.

In the absence of exceptions thereto, we *pro forma* adopt the Administrative Law Judge's dismissal of other allegations of the complaint.

In regard to the Administrative Law Judge's reliance on *Essex International, Inc.*, 211 NLRB 749 (1974), in noting that the no-solicitation rule contained in Respondent's handbook was valid, we note that the Board has recently overruled *Essex* and will now find such rules to be invalid. See *T.R.W. Bearings Division, a Division of T.R.W., Inc.*, 257 NLRB 442 (1981). Nevertheless, the validity of the handbook rule herein was not contested and the Administrative Law Judge found that the posted rule was violative of the Act.

[4] We note that the Administrative Law Judge inadvertently failed to find that the disciplinary warnings issued to Woodtke, Curtis, and Symolon violated Sec. 8(a)(3) as well as Sec. 8(a)(1). We shall correct this in the Conclusions of Law. We shall also correct the inadvertent failure of the Administrative Law Judge to include in the notice his findings of violations by Respondent's threats to eliminate its open-door policy and to lay off employees because of their support for the Union.

We shall also modify par. 2(b) of the recommended Order and the notice to prohibit Respondent from maintaining any rule prohibiting solicitations "at any time" on company property in conformity with the Administrative Law Judge's cease-and-desist order.

Member Zimmerman would not order Respondent to "neutralize the impact of the March 18 notices" posted by Respondent concerning the settlement of the previous unfair labor practice charges. Those notices have not been found to violate the Act, and, in the absence of a violation, Member Zimmerman considers the Board to be without power to order a remedy. Sec. 10(a) of the Act, which sets forth the Board's remedial power, is specifically limited to the prevention of unfair labor practices. Member Zimmerman would not, as the majority does here, include a remedial order with reference to activity not found violative of the Act. He would modify the recommended Order and notice accordingly.

3. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the complaint allegations not specifically found herein be, and they hereby are, dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives all employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT promise and sponsor a children's Christmas party, with gifts, in order to discourage our employees from selecting Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT maintain any rule prohibiting solicitation by employees at any time on company property in order to discourage our employees from selecting Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT issue warnings to our employees for violating any rule prohibiting solicitation at any time on company property, nor disparately enforce our rules, in order to discourage our employees from selecting Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT post and/or circulate any notices to our employees which modify, alter, or detract from notices posted pursuant to orders of or agreements with the National Labor Relations Board.

WE WILL NOT threaten our employees with loss of access to our officials to discuss complaints and grievances in order to discourage our employees from selecting Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT threaten our employees with layoff if they select Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT tell our employees that they have been denied merit increases because of a union in order to discourage our employees from selecting Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their Section 7 rights.

WE WILL rescind the warnings issued to Dorothy Curtis, Marsha Woodtke, and Barbara Symolon which were issued under a rule prohibiting solicitation by employees at any time on company property, and inform those employees of that action.

WE WILL rescind any rule prohibiting solicitation by employees at any time on company property.

GOULD, INC.

DECISION

STATEMENT OF THE CASE

DAVID S. DAVIDSON, Administrative Law Judge: The original charge in Case 39-CA-34 was filed on December 5, 1979, by Communications Workers of America, AFL-CIO (hereinafter called the Union). A complaint issued on February 8, 1980, alleging that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by threatening its employees with various losses of benefit or other reprisals, by impliedly promising them benefits, by interrogating them, by promulgating, maintaining, and enforcing rules prohibiting solicitation and employee discussion of unions, and by providing a Christmas party with gifts for employees and their families. Respondent filed an answer denying the commission of any unfair labor practices and raising as an affirmative defense that one or more of the allegations of the complaint was barred by Section 10(b) of the Act.

On March 18, 1980, the parties entered into a settlement agreement which provided, among other things,

that Respondent would post a notice to its employees and comply with all its terms and provisions.

Thereafter, on March 26, 1980, the Union filed the charge in Case 39-CA-176 alleging that Respondent had violated further Section 8(a)(1) of the Act by misrepresenting the terms of the settlement agreement to its employees. On April 17, 1980, an order consolidating cases, amended consolidated complaint and notice of hearing issued alleging that Respondent distributed notices to its employees on March 18, 1980, which violated the terms of the settlement agreement reached on the same day, in violation of Section 8(a)(1) of the Act, and that because of this conduct the settlement agreement was set aside and vacated. The consolidated complaint also restated the allegations contained in the original complaint. Thereafter, Respondent filed an answer denying the commission of any unfair labor practices and asserting as an affirmative defense that the settlement agreement had been improperly set aside.[1]

A hearing was held before me in Hartford, Connecticut, on May 8 and 9, 1980. At the conclusion of the hearing the parties waived oral argument and were given leave to file briefs, which have been received from the General Counsel and Respondent.[2]

Upon the entire record in the case, including my observation of the witnesses and their demeanor, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation with a place of business in Plantsville, Connecticut, where it is engaged in the manufacture and nonretail sale and distribution of electronic relays and related products. Respondent annually purchases and receives at this facility products, goods, and materials valued in excess of $50,000 which are transported to it directly from points outside the State of Connecticut. I find that Respondent is an employer engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Respondent's Alleged Violation of the Settlement Agreement*

1. The facts

As set forth above, on March 18, 1980, the parties entered into a settlement agreement providing for withdrawal of the original complaint in Case 39-CA-34. While the agreement provided that Respondent did not admit that it had violated the Act, it also provided that Respondent would comply with all of the terms and provisions of the following notice to employees which Respondent agreed to sign and post:

NOTICE TO EMPLOYEES
POSTED PURSUANT TO A SETTLEMENT AGREEMENT
APPROVED BY AN OFFICER-IN-CHARGE OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act gives all employees these rights:

To engage in self-organization
To form, join, or assist unions
To bargain collectively through representatives of their own choosing
To act together for collective bargaining or other mutual aid or protection
To refrain from any and all of these activities.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT interrogate employees concerning their union sympathies or solicit employee complaints and grievances in order to discourage membership in, or activities on behalf of, any labor organization.

WE WILL NOT threaten employees with loss of benefits or loss of access to the Company to discuss complaints and grievances in order to discourage employees from selecting a Union as their collective-bargaining representative.

WE WILL NOT tell employees that they would have been laid off from work if the Union had been selected as the employees' collective-bargaining representative.

WE WILL NOT sponsor a children's Christmas Party, with gifts, where the purpose is to discourage employees from selecting Communications Workers of America, AFL-CIO, as their collective-bargaining representative.

WE WILL rescind and not maintain any rule prohibiting solicitation by employees on Company property in non-working areas during non-working time, nor any rule concerning talking about the Union, and WE WILL rescind the warnings issued to Dorothy Curtis, Marsha Woodtke, and Barbara Symolon under the prior rule.

WE WILL NOT, in any like or related manner, restrain, coerce, or interfere with employees in the exercise of their Section 7 rights.

Concurrent with the execution of the settlement agreement, Union Representative Walter Collins by letter agreed on behalf of the Union that, if the Union filed further unfair labor practice charges against Respondent at the Plantsville facility before a date scheduled for an election in Case 39-RC-5, the Union would also file a request to proceed with the election.

The notice to employees was posted in Respondent's Plantsville, Connecticut, facility at approximately 4:30

[1] The consolidated complaint was amended at the hearing to add allegations that Respondent had also created an impression of surveillance among employees and had made some additional threats.

[2] Errors in the transcript have been noted and corrected.

p.m., on March 18, and remained posted thereafter. In the meantime, at 3 p.m. on the same afternoon, Respondent distributed copies of the following "Notice to All Employees" signed by its operations manager, Thomas Burke, on Respondent's letterhead. Copies were given to day-shift employees as they left work for the day.

> As I announced this morning the Company and the National Labor Relations Board, on Monday, *settled* all the outstanding unfair labor practice charges which were blocking the election. We entered into this settlement in order to assure you, our employees, *your right to vote* in the union election.
>
> The major provisions of this settlement are as follows:
>
> 1. The Company did not admit to any violation of the law.
> 2. The Company was not found guilty of any violation of the law.
> 3. *The election will be held on March 27, 1980.*
> 4. We have obtained assurances from the N.L.R.B. that they will not permit the CWA to block this new election.
> 5. We will post a Notice to Employees which simply states that we will not violate the labor law in the future. (This, of course, is what we have always said!!)
>
> I am sure that in view of the CWA's actions over the past 4 months, everyone clearly understands that the union will deny employees their most basic right to vote in order to satisfy their own selfish ends. On March 27th all employees will finally have the opportunity to reject—once and for all—these outside agitators. Thank you very much for your support during these past months and I hope that you will join with the vast majority of our employees who will *VOTE NO* next Thursday.

Later that evening, a revised "Notice to All Employees" was distributed to the employees working on the night shift. In that version paragraph 4 was changed to read, "We have obtained assurances from the C.W.A. that they will not block this new election." The revised notice was otherwise the same as the earlier version. On the following morning, at approximately 7 a.m., the following additional notice signed by Burke was distributed to day-shift employees:

> The Notice which was passed out to employees yesterday afternoon contained an error. The assurances regarding the fact that the election on March 27th will not be blocked were given by the C.W.A., not the National Labor Relations Board. We sincerely regret this error.

2. Concluding findings

The complaint alleges that the notices distributed to employees by Respondent violated the terms of the settlement agreement, that the distribution of the notices was in derogation of the intent of the terms of the settlement agreement, that the settlement agreement was therefore vacated, and in addition that the distribution of the notices violated Section 8(a)(1) of the Act. Respondent contends that the notices contained no threats of reprisal or promises and therefore were protected by Section 8(c) of the Act and not in violation of Section 8(a)(1) of the Act. Respondent contends further that the notices did not violate the terms of the settlement agreement and that the settlement agreement should be reinstated.

There are two separate issues involved. One is whether the notices violated Section 8(a)(1) of the Act; the other is whether the distribution of the notices breached the terms of the settlement agreement. With respect to the former, I find merit in Respondent's contentions. The notices contain neither threats nor promises, and comments about a Board decision similar to those made in Respondent's notices would not violate the Act.[3] The fact that the comments are directed to the terms of the settlement agreement and may be in violation of or in derogation of its terms does not warrant the conclusion that otherwise lawful notices become independent violations of the Act. Accordingly, I shall recommend dismissal of the allegations that the notices distributed to employees on March 18 violated Section 8(a)(1) of the Act.

Different considerations, however, apply to the second issue. In *Bangor Plastics, Inc.*, 156 NRLB 1165 (1966), enforcement denied 392 F.2d 772 (6th Cir. 1968), the Board held that notices to employees which amounted to "a patent attempt to minimize the effect of the Board's notice" warranted setting aside a settlement agreement. The Board stated that, where the posting of a notice is the only affirmative action a respondent must take, the policy of the Act is not effectuated when the respondent undertakes to post with it "a statement evidencing to employees its position that the posting of the Board's notice is to be considered nothing more than a mere formality and that the settlement agreement will not effect any change in Respondent's attitude toward the statutory rights of its employees."[4]

I find that the notices distributed to employees by Respondent on March 18 warranted setting aside the settlement agreement under these principles. Thus, Respondent not only stressed that it had neither admitted nor been found to have committed violations of the Act, but it also falsely portrayed the official notice to employees as simply stating that Respondent would not violate the labor law in the future. This portrayal ignored totally the portion of the notice requiring rescission of rules against solicitation and warnings to employees and characterized the remainder of the detailed notice as no different from what Respondent had always said. The derogatory impact of Respondent's notice was especially strong with

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[3] *Speed Queen, a Division of McGraw-Edison, Co.*, 195 NLRB 462 (1972).

[4] 156 NLRB at 1167. See also *Southern Athletic Co., Inc.*, 157 NLRB 1051 (1966); *Montgomery Ward & Co., Inc.*, 162 NLRB 369, 376-377, 380 (1966); *News-Texan, Inc.*, 174 NLRB 1035, 1036-37 (1969), enfd. 422 F.2d 381 (5th Cir. 1970); *Arrow Specialties, Inc.*, 177 NLRB 306, 307-308, enfd. 437 F.2d 522 (8th Cir. 1971); *Bingham-Willamette Company*, 199 NLRB 1280 (1972); *N.L.R.B. v. Union Nacional de Trabajadores*, 611 F.2d 926 (1st Cir. 1979).

respect to first-shift employees, for this notice was given them as they left the plant before the official notice was posted. By the time they returned the next day and had an opportunity to read the Board's notice their view of it was necessarily influenced by Respondent's notice. Furthermore, as in *Arrow Specialties, Inc., supra*, Respondent's notice "unfairly cast the Union in the role of the culprit" whose efforts to deny employees their right to vote "was frustrated by the Respondent's agreement to settle the case."[5] The initial notice to first-shift employees which misstated the facts in its paragraph 4 intensified this effect, but even as amended, the basic claim remained unchanged. I find that by its characterization of the settlement in its notices to its employees Respondent patently attempted to minimize the effect of the Board's notice, sought to portray itself as blameless while placing on the Union the burden of responsibility for denial of employee rights, and indeed "so contradict[ed] the terms of the Board's required notice as to cancel the legitimate purpose of the required notice and amount to noncompliance" with its terms.[6]

I find therefore that the Officer-in-Charge did not act improperly in setting aside the settlement agreement and in reinstating the allegations of the complaint in Case 39-CA-34.

Accordingly, it is appropriate and necessary to consider on their merits the remaining allegations of the amended consolidated complaint.

B. *Alleged Threats at Employee Meetings*

1. The facts

The Union began an organizing campaign at Respondent's Plantsville facility sometime before July 1, 1979. On June 29, 1979, Union Representative Collins distributed a letter to all employees through which management officials became aware of the Union's organizing efforts. Thereafter, starting in July, Respondent's operations manager, Thomas Burke, and personnel manager, Margaret Jorgensen, held a number of meetings with groups of from 12 to 20 employees at which the union campaign and company benefits were discussed.

Three employees, Curtis, Hall, and Schatz, testified for the General Counsel to statements by Jorgensen and Burke at these meetings. Jorgensen, Thomas Burke, and Production Manager Paul Burke gave testimony, substantially, although not entirely, in contradiction to that of the General Counsel's witnesses. Where their testimony is in conflict, I have concluded that the versions of Thomas Burke and Jorgensen of their remarks are generally more reliable than those of Curtis, Hall, and Schatz. Thus, it is apparent from the testimony of Curtis, Hall, and Schatz that their perception and recollection of the disputed conversations is at best partial and garbled and there are inconsistencies and evident improbabilities in their versions. For example, Curtis testified that an employee asked Burke if employees would go back to the minimum wage and lose everything if the Union won the election, and that Burke replied that he believed so but would have to check with his attorney. Schatz testified that Burke told employees that if the Union came in they would lose all their benefits, their wages would go back to the minimum, and "that would be negotiated between the Company and the Union." Yet Curtis and Schatz also testified that Burke said that everything was negotiable, and Schatz testified further that Burke said that as a result of bargaining employees could end up with more, the same, or less than what they had. While Schatz could not recall that Burke said that wages and benefits would remain frozen during negotiations, she recalled that he used the word frozen in the meetings. Hall testified that Burke said that their wages and benefits would "come to a halt" until the negotiating was over, and testified similarly to Schatz as to Burke's use of the word "frozen." I find this testimony far less than coherent and far less plausible than Burke's version that he told employees that everything was negotiable and that wages and benefits would remain frozen while negotiations took place.

As for Jorgensen's statements, Hall testified that Jorgensen told employees that they would definitely lose production bonuses because these were benefits Respondent wanted to give but did not have to give. Jorgensen denied making this statement, but her testimony as to what she said about production bonuses was not entirely consistent and her testimony was defensive in tone. Respondent called Delores Strauss, who attended a different meeting with Jorgensen from that attended by Hall, to testify generally as to what Jorgensen said about production bonuses, and the General Counsel called no witness to corroborate Hall, although, as developed on cross-examination, Schatz was present with Hall at one meeting held by Jorgensen and testified that nothing was said about production bonuses at that meeting. Although less free from doubt, I have concluded that Hall's uncorroborated testimony as to Jorgensen's statements about production bonuses, which closely parallels her testimony about the same subject by Burke, also cannot be relied upon as accurately reflecting Burke's statements. Accordingly, I find that the following occurred of relevance to the allegations of the complaint at the employee meetings held by Burke and Jorgensen.

At Burke's meetings with employees he discussed, among other things, what would happen if the Union won the election and collective-bargaining negotiations began, and employees asked questions. Burke told employees that Respondent would have to bargain in good faith and that everything would be negotiable except the minimum wage which was required by law and that it was possible that they would get more, the same, or less, than what they were presently receiving. Burke told employees that production bonuses were negotiable just as the dental package, medical and health insurance, or holidays were. Burke said that he could not say how long negotiations would last, that two parties had to come to an agreement, and that there were cases where bargaining had gone on for over a year without an agreement being reached. Burke also said that benefits and wages would be frozen during the negotiation process.

[5] 177 NLRB at 308.

[6] *N.L.R.B. v. Union Nacional de Trabajadores, supra*, 611 F.2d at 930.

In the course of the meetings, employees raised questions as to problems they were having. At one meeting employees, including Hall, mentioned some production material that was causing difficulty because they thought it did not meet specifications. Tom Burke asked Production Manager Paul Burke to check out the problem. At another meeting a woman complained that some of the production rates were set too high which made it difficult for employees to meet them; Burke said that he would look into it.[7]

Burke told employees about the so-called open-door policy that had been in effect, saying that his door was always open to employees who were free to come to him with problems they were unable to resolve with their supervisors or department managers. Burke also told employees that, if the Union were to represent them, any complaint would have to be handled through a union representative, that employees would not be free to represent themselves, and that they would have to rely on a third party to represent them.[8]

At Jorgensen's meetings with employees, she described and explained existing company benefits and told employees that if the plant were organized all benefits would be negotiated with the Union. Jorgensen also mentioned the open door policy and told employees that, if the Union were elected, they would no longer have that policy and would no longer be able to come to her or Burke with a problem but would have to go through a middleman.[9]

2. Concluding findings

In the light of the findings of fact above, I find allegations that Burke threatened to reduce wages to the minimum wage and that he and Jorgensen threatened loss of production bonuses are not supported by the record evidence. There remain for consideration Burke's statements that employee wages and benefits would be frozen during the negotiation process, his responses to employee complaints, and his and Jorgensen's statements about what would happen to Respondent's open-door policy.

As set forth above, during the employee meetings Burke told employees that he could not say how long negotiations would take but there were cases where bargaining had gone on for over a year without an agreement being reached and that while negotiations took place wages and benefits would remain frozen. Up until this time, Respondent had a policy of granting merit increases to deserving employees. It conducted a general review of all employees in August, but it also granted merit increases at any time based on recommendations of supervisors and department managers. Wage rates of newly hired employees were reviewed after 60 days of employment.

The General Counsel contends that Burke's statements that wages and benefits would be frozen during negotiations, especially when coupled with his statements that the negotiation process could take more than a year, were coercive because they threatened loss of the present benefit of eligibility for merit increases at any time. In *Allied Products Corporation, Richard Brothers Division*, 218 NLRB 1246 (1975), modified and remanded 548 F.2d 644 (6th Cir. 1977), 230 NLRB 858 (1977), enfd. 629 F.2d 1167 (6th Cir. 1980), the Board held that it is a violation of Section 8(a)(5) and (1) of the Act for an employer to suspend unilaterally a previously established merit wage review of and/or increase program during negotiations with a certified union. Since Respondent would be obliged, upon the Union's demonstration of its majority in the election, to maintain in effect its current merit review policy until negotiations resulted in an agreement upon its change or an impasse, Burke's statement to employees that wages would be frozen constituted a threat to employees to deprive them of benefits to which they would otherwise be entitled because they chose union representation. I find that such a threat violates Section 8(a)(1) of the Act.[10]

With respect to employee complaints, the General Counsel contends that Burke implied that the employee complaints would be remedied in the light of the context in which the complaints were made and were responded to. In one case enployees complained about materials which were giving them production problems, and in the other case an employee complained that she thought production rates were set too high. In the first case, Burke asked the production manager to look into the problem and in the second case he replied that he would look into the matter. Neither complaint appears to have been voiced in response to a direct request for employees to air their grievances. While it is not entirely clear in what context the complaints were made, it appears that in Burke's meetings with employees he asked generally for questions and did not specifically ask employees to voice their complaints. I find this case distinguishable from *Tendico, Inc., etc.*, 232 NLRB 735, 748 (1977), and *Hasa Chemical, Inc.*, 235 NLRB 903, 907–908 (1978), and that there was no implied promise of benefit to employees by Respondent in relation to these employee complaints. Moreover, whatever the implications of Burke's instructions to the production manager, Respondent could not be expected to ignore employee complaints about production problems however they come to Respondent's attention, particularly where there is no indication that the problem had been previously brought to management's attention and left unremedied. I find that Respondent did not violate Section 8(a)(1) of the Act by so-

[7] Dorothy Curtis testified, without contradiction, as to the complaint about high production rates. I have credited her in this respect.

[8] In a letter to employees echoing this theme dated November 19, 1979, Burke wrote, "Among our most basic rights and freedoms as individuals is the right to deal directly with each other, without an outside group acting as a wall between us." Burke initially testified that he mentioned the loss of access to him in response to questions about how grievances would be handled with a union and told them that it was his understanding that, under contractual grievance procedures, any complaint would have to be handled by a union representative. However, from his cross-examination and his raising of the theme in his November 19 letter as well as the testimony of Curtis and Schatz, I find that Burke's statements about loss of access to him were directly raised by him and not qualified as merely his understanding of what would happen under a contract.

[9] Hall testified without contradiction as to Jorgensen's statements about the open-door policy, and I have credited her in this regard.

[10] See also *Travis Meat & Seafood Company, Inc.*, 237 NLRB 213 (1978); *Liberty Telephone & Communications, Inc.*, 204 NLRB 317 (1973).

liciting grievances or by impliedly promising to remedy them.

Finally, with respect to the discussion of the open door policy, the General Counsel contends that Burke's statements constituted a threat of loss of present benefits. Respondent contends that Burke's remarks were not a threat because he merely reiterated present policy and conveyed his understanding of how grievances are handled under most collective-bargaining agreements.

As the Board has held, "selection by employees of a union does not preclude employees, as individuals, from going to their employer with their problems or grievances."[11] When an employer tells employees that a consequence of unionization will be to force their employer to close the previously open door, lacking any foundation in law such statements constitute threats on the part of the employer to curtail existing employee rights and to discontinue employee benefits as a consequence of employees' choice to be represented by a union.

The argument that Burke in this case made no such threat because he only conveyed his understanding of how grievances are handled under most collective-bargaining agreements is not persuasive. Burke was not engaged in a theoretical discussion of how collective bargaining works. As Burke testified on cross-examination, he told employees they would not be free to represent themselves and would have to rely on a third party to represent them. That depiction of this consequence of representation was an affirmative part of Respondent's campaign as appears from Burke's November 19 letter and Jorgensen's parallel statements in her meetings with employees. Thus, in his letter Burke depicted the Union as a "wall" which would come between him and the employees, interfering with their "most basic rights and freedoms as individuals." Similarly, when Jorgensen addressed employees, she told them that, if the Union were elected, they would lose their freedom to go directly to management with problems.

I find that, by Burke's and Jorgensen's statements about the open-door policy, Respondent threatened employees with the loss of a present condition of their employment in violation of Section 8(a)(1) of the Act.

C. *Alleged Violations Attributed to Jon Coutant*

According to employee Brenda Cannatelli in July 1979 her supervisor, Jon Coutant, told her that she had been identified in the office as one who handed out pamphlets for the Union. She testified that she told Coutant that she had done nothing of the sort and that she had only received the same letter from the Union which at least a hundred other employees had received.

Cannatelli also testified that, on a night in October, a number of the employees on her line were talking while at work about statements Director of Operations Burke had made at a group meeting. When Coutant came by, they asked him about them, and according to Cannatelli, Coutant replied, "Just watch your step girls, don't get yourself in any trouble by talking on the line." Coutant denied that either incident occurred and testified that employees were allowed to talk while they were working.

The allegations based on these incidents were added to the complaint by amendment at the hearing upon a representation by counsel for the General Counsel that these incidents did not come to counsel's attention until the week before the hearing. Cannatelli gave no written statement during the investigation of the case. Whether or not these amendments were barred by Section 10(b) of the Act, as Respondent contends, it is apparent that Cannatelli did not come forward with her version of these incidents until more than 6 months after the latter of them occurred, even though she was in attendance on March 17 at the time the initial complaint was scheduled for hearing. The passage of time and the absence of an occasion for Cannatelli to memorialize or focus on her recollection of these incidents until May 1980, while not a *per se* cause for discrediting her, certainly raises questions as to the accuracy of her recollection of Coutant's statements. At the same time, Coutant had no occasion to focus on these incidents until considerable time had passed and after he had many other conversations with employees. Although the second of the incidents described by Cannatelli involved several other employees, no witness was called to corroborate Cannatelli. In these circumstances, I conclude that Cannatelli's recollection may not be relied on to establish the misconduct attributed by her to Coutant and I will recommend that these allegations of the amended complaint be dismissed.

In February 1980 at a meeting of employees in his department, Coutant explained to them how merit increases were awarded and said that he would recommend employees for them if their records warranted it. After the meeting, Cannatelli asked Coutant about a merit raise for herself, and he told her that he would recommend an increase for her because he thought her production qualified her for it. According to Cannatelli, Coutant told her that she would hear by March 10 whether she received it.

On March 17, 1980, Cannatelli was present at the time and place for the hearing on the initial complaint in this case. Company officials, Tom and Paul Burke, saw her there. On the next day, when Paul Burke handed out Respondent's notices about the settlement agreement to night-shift employees, he bypassed Cannatelli and one other employee who was seated with her at a cafeteria table. Later Cannatelli asked Coutant if she was an employee and if she was entitled to get the notice. Coutant said that she was and took a copy out of his pocket for her to read.

Later that evening, Cannatelli spoke to Coutant again, telling him that she did not think that bypassing her and her fellow enployee was right. Cannatelli then said she would like to speak to him about her merit raise. According to Cannatelli, Coutant replied, "You can forget about your merit raise." She testified that she asked why, and he started to laugh. She asked if it had anything to do with the Union, and he replied that it did. According to her, he added, "You're not going to get a merit raise." She told him that he had told her that the Union would have nothing to do with it, and he said, "It shouldn't

[11] *Colony Printing and Labeling, Inc.*, 249 NLRB 223, 224 (1980).

have had but . . . everything is being blamed on the Union." Cannatelli had last received a merit raise in the previous February. According to Coutant, when Cannatelli asked where her merit raise was, he replied that as far as he knew it was still on his boss' desk. He testified that he said nothing to her about the Union in that conversation.

With respect to these conversations, the circumstances and the conclusions differ. Here the testinony came only 6 weeks after the critical events. There is no question that Coutant had recommended a merit increase for Cannatelli before the March 17 scheduled hearing date, that after Cannatelli appeared for the purpose of observing the hearing she was bypassed by Burke in the distribution of notices, and that she had a further conversation with Coutant about the increase. As to this conversation, none of the reasons for doubting the accuracy of Cannatelli's recollection which related to her other testimony apply. As between Cannatelli and Coutant, Cannatelli was more complete in her description of their conversation, and Coutant's initial recollection was shown on cross-examination to be less than complete. Coutant's testimony that he told Cannatelli that he did not think she was supposed to get a notice on March 18 also supports her uncontradicted description of the manner in which she was bypassed, and his explanation that he did not think there were enough copies for all night-shift employees does not explain why she was singled out or why copies were available in the personnel office. I have concluded that Cannatelli's version of her conversations with Coutant in February and March 1980 is to be credited.

I find that by March 17 Cannatelli had been identified as a union supporter. I find further that by Coutant's statements that Cannatelli had been denied a merit increase because of the Union, Coutant violated Section 8(a)(1) of the Act.[12]

D. *The No-Solicitation Rule*

Respondent's employee handbook, which has been in effect for approximately 3-1/2 years, contains the following: solicitation/distribution rule:

> EMPLOYEES OF THE COMPANY
>
> Employees may not solicit for any purpose during working time. Employees may not distribute literature for any purpose during working time or in working areas.
>
> "Working time" includes the working time of both the employee doing the solicitation or distribution and the employee to whom it is directed.
>
> NON-EMPLOYEES
>
> Persons not employed by the company may not solicit or distribute literature on company property for any purpose at any time.

In addition, Respondent posted a notice on the employee bulletin boards throughout the plant in January 1979, which remained posted until removed in December 1979. That notice was as follows:

> NO SOLICITATION PLEASE!
>
> PLEASE BE REMINDED THAT IT IS CONTRARY TO THE POLICY OF GOULD FOR AN EMPLOYEE TO CONDUCT ANY TYPE OF SOLICITATION WITHIN THE PHYSICAL LOCATION OF OUR PLANT, OR ON COMPANY TIME.
>
> THE RESTRICTIONS UNDER THIS POLICY PROHIBIT THE SALE OF RAFFLE TICKETS, CHANCES, ATHLETIC POOLS, OR ANY TYPE OF PERSONAL BUSINESS TRANSACTIONS WHICH ARE NOT AUTHORIZED BY THE MANAGEMENT OF GOULD. IF YOU HAVE ANY QUESTIONS REGARDING THIS RULE, MAKE CERTAIN THAT YOU CHECK WITH YOUR SUPERVISOR.
>
> YOUR COOPERATION IS APPRECIATED.
>
> PERSONNEL DEPARTMENT

On February 25, 1980, Respondent posted still another notice to all employees as follows: (That notice is still posted within the plant.)

> NOTICE TO ALL EMPLOYEES
>
> In view of the continuing delay in the holding of the union election, we would like to take this opportunity to re-state our *No Solicitation and No Distribution Rule.* As you know, this rule is published on Page 15 of the Employee Handbook, which has been provided to all employees.
>
> This rule covers all forms of solicitation and distribution by employees while on Company premises. The rule is as follows:
>
> NO SOLICITATION/NO DISTRIBUTION
>
> EMPLOYEES OF THE COMPANY
>
> Employees may not solicit for any purpose during working time. Employees may not distribute literature for any purpose during working time or in working area.
>
> "Working Time" includes the working time of both the employee doing the solicitation or distribution and the employee to whom it is directed.
>
> NON-EMPLOYEES
>
> Persons not employed by the company may not solicit or distribute literature on company property for any purpose at any time.

The General Counsel contends that the notice posted in January 1979 which remained posted until around the time an election was scheduled to be held violates the Act because it banned all solicitation by employees within the plant. The General Counsel does not contend that the rule contained in the handbook or the notice

[12] See *Brown & Connolly, Inc.*, 237 NLRB 271, 278 (1978), enfd. 593 F.2d 1373 (1st Cir. 1979).

posted on February 25, 1980, violated the Act. Respondent contends that the January 1979 notice was supplementary to the handbook rule and that it applied only to commercial solicitation and not union solicitation.

There is no evidence as to the circumstances surrounding the posting of the January 1979 notice. Respondent argues that the limited application of that notice is apparent on its face from the use of the term "personal business transactions" and the examples of prohibited activities. I do not agree. The notice uses the same term as the handbook in describing what is proscribed; namely, solicitations. It makes no reference to the handbook and no effort to distinguish between the handbook rule and the notice rule. Nowhere is it suggested in the notice that Respondent has two policies with respect to two different kinds of solicitations. Respondent contends that its enforcement of the rule only as to union solicitation during working time shows that the handbook rule was intended to continue to govern union solicitation. However, it appears that Respondent was even more lax with respect to enforcement of the posted rule as to personal solicitations unrelated to union activities than in its enforcement relating to union solicitation. Moreover, disciplinary warnings issued to employees Barbara Symolon and Dorothy Curtis refer to the no-solicitation policy posted on the bulletin board as the basis for their discipline for union solicitation during working time. I find that the bulletin board notice applied to all in-plant solicitation but, in any event, the posted rule was at the very least ambiguous, and the ambiguity must be construed against Respondent.[13] I find that by maintaining in effect the posted rule banning all solicitation in the plant during the 6-month period before the charge was filed, Respondent violated Section 8(a)(1) of the Act.[14]

E. *Paul Burke's Alleged Restriction on Talking About the Union*

According to employee Dorothy Curtis, in October 1979 while working she talked with another employee for about half an hour about her reason for supporting the Union. She testified that the next morning there was an employee meeting in the cafeteria, at which Paul Burke said that some people had complained about being harassed about the Union and that, if it did not stop, "harsh measures" would be taken. According to Curtis, Thomas Burke was also present at the cafeteria meeting.

Paul Burke testified that he called a meeting in the plant cafeteria in October of the employees in Curtis' department because of production problems. According to him, the subject of the Union did not arise during the meeting, but he did talk about harassment of employees with specific reference to an employee who had emotional problems. Jorgensen corroborated Paul Burke, and both testified that Thomas Burke was not present at this meeting.

In the absence of corroboration, I am not persuaded that Curtis' testimony accurately reflects what Paul Burke said at this meeting. Possibly, sensitized by her own conversations at work the previous day and the reluctance of the target of her conversation, she read into Burke's comments about harassment a reference to herself. But whatever Burke said, I credit his testimony that he made no mention of the Union at this meeting. Accordingly, I shall recommend that the allegation of the complaint based on this incident be dismissed.

F. *Enforcement of the No-Solicitation Rule*

On October 1, 1979, Supervisor Al Bailey gave employee Barbara Symolon a written reprimand and warning. By its terms the purpose of Bailey's discussion of the warning with Symolon was, "To advise Barbara of our no-solicitation policy which is posted on bulletin boards." The summary of discussion states: "This warning is to document that Barbara has been reported by fellow employees for soliciting during working hours." It further states, "If solicitation continues, further disciplinary action may be necessary."

On October 3, 1979, Bailey gave Dorothy Curtis a written reprimand and warning identical except as to names. In October or November, Bailey verbally warned employee Marsha Woodtke against soliciting. No other employees have been disciplined for solicitation.

There is no testimony as to the circumstances leading to Symolon's warning, but Curtis and Woodtke testified without contradiction as to the circumstances of their warnings. Curtis was warned after she had talked for about half an hour with a fellow employee about her reasons for supporting the Union while both were working. Curtis had started the conversation by asking the employee what she thought of the Union, and continued to talk to her after the employee replied that she did not want to get mixed up in it. When Bailey gave Curtis the warning on October 3, he told her that he did not want to give it to her but that he had to and that she should know better than to do what she had done. She replied that she knew better. Bailey told her that she was being warned for soliciting.

In September or October Woodtke had a 10- or 15-minute conversation with another employee in her department while they were working on their line. During the conversation one of them brought up the subject of the Union and Woodtke told the other employee that he should consider getting into a union shop. When he said that he was not interested, she continued the conversation stating what she considered to be the advantages of union shops. When he said that he was not interested, she urged him to attend a union meeting and decide for himself.

Later the same day, Bailey called her into the cafeteria where he told her that he had several complaints and was warning her for solicitation; he wanted her to stop.

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[13] *Mallory Battery Company, etc.*, 239 NLRB 204 (1978).

[14] *Essex International, Inc.*, 211 NLRB 749 (1978). Although Respondent removed the offending notice in December 1979, and posted a new notice in February 1980 reminding employees of the valid handbook rule, the offending rule remained posted and ostensibly effective during the entire period from the start of the union campaign until around the time the election was to have taken place. It was posted at the time employees were disciplined for solicitation and was specifically referred to in their disciplinary warnings. When it was removed, Respondent gave no reason and did nothing to neutralize its effect. I find in these circumstances that the removal of the offending notice and the posting of the February notice did not effectively remedy the violation or render moot the relevant allegations of the complaint.

She asked what he meant, and he said that she knew. She asked if he meant the Union and how she could solicit for the Union when she did not know if she was for it or against it. She then asked to face her accusers, but Bailey said that would not be fair to them, and she said that he was not being fair to her. She then named the employee to whom she talked and said that she had been talking to him about the Union that morning. Bailey said that he was not her accuser. She then said they had all talked about the Union but that no one said whether they were for or against it, and she suggested that Bailey bring everyone into the cafeteria because they had all been talking about it. At the end of the conversation Bailey told Woodtke that he believed her. She asked if there would be a written warning and what would come of it, but Bailey gave no answer.

While the record does not establish the circumstances surrounding Symolon's warning, the warning itself is identical in form to that given Curtis, and Curtis' and Woodtke's warnings followed on-the-job conversations about unions. As these were the only warnings given by Respondent for solicitation, it is reasonable to infer that all three were based on alleged union solicitation.

The General Coumsel contends that disciplinary warnings were violative because they were based on the posted overly broad no-solicitation rule. Respondent contends that the reference to the posted rule was a harmless error and that the warnings for solicitation during working time were based on and supported by the valid handbook rule under which they were lawful. The General Counsel contends in the alternative that, even if based on the facially valid handbook rule, the discipline was unlawful because the rule was disparately enforced rendering it invalid.

As set forth above, I am not persuaded that there were two distinct no-solicitation rules applying to different situations. Rather than harmless error, Bailey's reference to the posted rule in his warning supports the conclusion that both no-solicitation rules applied to solicitations generally and certainly that the posted rule was construed by Bailey as applicable to union solicitation. I thus conclude that the disciplinary actions were based on the overly broad posted rule and that they violated Section 8(a)(1) of the Act.[15]

In addition, there is evidence to support the General Counsel's alternative theory. Collections were frequently taken on company time for Christmas presents, for the United Fund, for supervisors, and for gifts on special occasions such as marriages, illnesses, or resignations. Yet, disciplinary warnings were given only for union solicitation. Such disparate enforcement of a valid rule is unlawful.[16] I find that the disciplinary warnings to Symolon, Curtis, and Woodtke violated Section 8(a)(1) of the Act.

G. *The Christmas Party*

On Sunday, December 9, 1979, Respondent held a children's Christmas party and family open house, which all employees were invited to attend with their children and grandchildren. No admission fee was charged. At the party and open house, refreshments were provided and presents, costing approximately $4.75 apiece, were given to all children. The party was held in the plant cafeteria, and the open house consisted of self-conducted tours of the plant. No speeches were made by any management official or employee, and no literature was posted in the plant regarding the union campaign or the election scheduled to be held on the following Thursday. Insofar as appears, Respondent made no reference to the party in any election campaign material or in connection with the Union until January 2, 1980, when Respondent distributed a letter to employees upon their return from Christmas and New Year's holidays.

In the letter Respondent set forth its position with respect to the election, which had not taken place because of charges filed by the Union, and expressed its desire to have the election take place quickly. In the next to the last paragraph it stated: "I have enclosed with this letter a flyer which I hope you and your family will read carefully. Although no company is perfect, I believe that we have made substantial improvements and gains in 1979, and look forward to the possibilities for 1980. However, with the many grave dangers and threats presented by the C.W.A., the future for 1980 is, at best, very uncertain." To this letter was attached a flyer containing the following:

HAPPY NEW YEAR???

1979

CONSISTENT WAGE INCREASES
JOB SECURITY
EXCELLENT FRINGE BENEFITS (INCLUDING DENTAL)
GOOD WORKING CONDITIONS
FAIR TREATMENT
PRODUCTIVITY BONUS
INDIVIDUAL RIGHTS AND FREEDOMS
CHRISTMAS PARTY AND SUMMER PICNIC

1980 WITH C.W.A. ????

BARGAINING
INITIATION FEES
SPECIAL PRIVILEGES FOR UNION "PETS"
UNION SHOP AND DUES CHECK-OFF
MONTHLY DUES
UNION BOSSES
FINES
ASSESSMENTS
STRIKES

NO DUES
NO STRIKES
NO UNION RULES—VOTE—NO UNION

Before December 1979, there had never been a children's Christmas party or an open house held at the plant.

When Margaret Jorgensen started to work for Respondent as plant personnel manager in November 1978,

[15] *A.T. & S.F. Memorial Hospitals, Inc.*, 234 NLRB 436 (1978).
[16] *Capitol Records, Inc.*, 233 NLRB 1041, 1044-46 (1977).

she proposed implementation of a number of social events at the plant, including a family type Christmas party in 1978. Director of Operations Thomas Burke told her that plans had already been made for an annual Christmas dinner dance and that it was too late to plan such a party for that year but that they could think about it for the next year.

In the spring of 1979, Jorgensen again proposed a number of social events, including a family Christmas party similar to one that her previous employer had held. Burke indicated that he liked the proposal but gave her no definite response and said that they could consider it.

On September 1, 1979, Respondent's headquarters issued the following corporate policy memo:

> OPEN HOUSE PLANNING AND IMPLEMENTATION
>
> *PURPOSE*
>
> To provide an opportunity for employees, their families, and community representatives to visit Gould facilities, annually, in order to learn, firsthand, current facts about the Company, its personnel, and the respective operation.
>
> *POLICY*
>
> All Gould units, including corporate and division headquarters, laboratories, sales offices, and manufacturing facilities, will hold an open house at least once a year. Where appropriate, units should combine their open houses (i.e., consolidated sales offices).
>
> *PROCEDURES*
>
> Planning and inplementation of the open house will be the responsibility of the head of the operation.
>
> A report of the present year's open house, including attendance, special activities conducted, representation of community and government leaders and other dignitaries, an overall evaluation of the event, and the date of the next open house must be submitted to the Vice President, Human Resources, no later than December lst of each year.
>
> While each open house will differ, there are certain guidelines which should be followed in order to present a positive, lasting image for the visitors. The attached checklist will provide the best means of assuring a well-managed and successful open house and should be utilized in conjunction with the timetable provided.

The attached checklist contained, among other things, a suggested guest list which included employees and families, customers, civic and government leaders, shareholders, educators, clergymen, suppliers, manufacturers, dealers, competitors, retired employees, youth groups, professional societies, and special guests suggested by executives. The checklist also indicated that, in setting the date and time, the open house could be tied in with the Company's anniversary or special events and that other local events should be checked to avoid conflict.

Thomas Burke testified that he decided to combine the open house required by corporate policy with a children's Christmas party in 1979 because the party recommended by Jorgensen would fit in nicely to draw people to the open house. Burke testified that he made the final decision to hold the children's Christmas party in late October or early November, but did not recall the date. According to Jorgensen, the decision was made in October. Burke testified that the December 9 date was selected for the party because they wanted the party as close to Christmas as possible without interfering with family plans of employees over the Christmas holiday weekend or other things that had been scheduled. He testified that the weekend before Christmas was ruled out because the plant was to be closed on Christmas day and the preceding day and that the annual dinner dance for employees and spouses had already been scheduled for December 15, so that the weekend of December 8 and 9 was left as the closest available weekend to Christmas. Sunday, December 9, was chosen to avoid interfering with other family activities, such as shopping or work.

According to Burke, at the time that the date was picked for the children's Christmas party and open house he did not know when the election would be held. He testified that, after the representation petition was filed on October 15, he discussed with company officials the preferred date for an election and that, before a representation hearing scheduled for November 7, they had talked about a December election date. Burke also testified that shortly before November 7 the Union was told that Respondent would consent to an election if the parties could agree on a December date. He was aware through counsel that the Union had been insisting on an election date in November or early December.

Jorgensen was put in charge of organizing and preparing for the party, and she put together a committee of employee volunteers to plan the party, decorate the plant, purchase gifts for the children, arrange for refreshments, provide entertainment, and make displays to demonstrate the nature of the work done in the plant. While Jorgensen testified that employees were not paid for the time they spent preparing for the party and open house, her testimony was contradicted by a stipulation that 89 hours of paid overtime were worked on the day before the party in cleaning the plant in preparation for the party and open house.

Employees were invited to attend and to bring with them their children, spouses, escorts, and in some cases, grandchildren, nieces, and nephews.[17] With one exception, no invitations were extended to corporate officials, government officials, community leaders, or other nonemployees.[18]

The total expense for the Christmas party was approximately $4,400, of which slightly more than half was for toys given to the children who attended the Christmas party. The cost of the refreshments for the party was slightly under $1,000, and the rest went for decorations, supplies, and entertainment. Respondent paid the entire

[17] The only written notice of the party was distributed to employees between November 23 and 26.

[18] An invitation was extended to a Board agent who did not attend.

cost. Respondent did not submit a notice or report of the open house to corporate headquarters as required by the September memo on open house planning and implementation, even after receiving a followup memo on January 8, 1980, reminding managers that headquarters wanted a schedule of events submitted no later than December 1 each year.

Respondent has sponsored other social events for its employees in the past. There have been annual Christmas and spring dinner dances for employees and spouses with a portion of the cost borne by the employees. In 1979 there was a Christmas dinner dance, but none was held in the spring. Respondent also sponsored picnics at which employees paid the cost for their families. Usually Respondent bore more than half the cost of these events.

After Jorgensen became manager, at her recommendation Respondent also instituted other social events and activities for employees at its expense, including service awards luncheons, retirement gifts and celebrations, graduation parties for those completing high school equivalency programs, staff Christmas luncheons, and free coffee and doughnuts for a perfect safety record.

The General Counsel contends that the Christmas party constituted a benefit to employees which was calculated to interfere with their rights. Respondent contends that the party was a preelection social event which does not violate the Act and that the Christmas party was, in the light of Respondent's past sponsorship of social events, not a grant of benefits to employees.

The Board has held that campaign parties are legitimate campaign devices, absent special circumstances.[19] Although in one case, *Fashion Fair, supra*, the Board noted that no mention was made of the union at the party, it is clear that campaign parties are sanctioned not as a permissible grant of benefits but as a normal incident of electioneering not likely to be viewed as a harbinger of future benefits.

Respondent cites *Fashion Fair* as supporting its position. However, Respondent does not claim that its Christmas party and open house were incidents of electioneering but rather that they were independent of the election. It therefore follows that the Christmas party and open house must be considered from the vantage point of general principles applicable to grants of benefits to employees during election campaigns. Despite Respondent's contention that corporate open-house policy was a reason for the party, many of the objectives of that policy were ignored, and only employees were invited to the party and open house. One cannot avoid the conclusion that the open-house policy served as a rationalization rather than as a reason for the Christmas party, and that Respondent's principal purpose was to provide a Christmas party for the employees and their families. Whatever conclusion might have been drawn if the Christmas party had been held as described and then forgotten, Respondent itself chose to treat the party as a benefit in its New Year's greeting to employees. In its January 2 letter it referred to "substantial improvements and gains in 1979 and the uncertain future in 1980." In the attached leaflet among the eight items listed for 1979 was "Christmas Party and Summer Picnic" contrasted with incidents of union representation shown under "1980 with C.W.A. ???" The plain inference to be drawn by employees was that the Christmas party was a benefit granted in 1979 which would be continued without the Union, but the future of which would be uncertain with the Union. I find that the Christmas party was a grant of a benefit to employees.

I find further that the Christmas party was not a permissible grant of benefit. Although Respondent contends that the Christmas party represented only a minor variation from Respondent's past social programs,[20] there had never been such a Christmas party before. It was not a substitute for the Christmas dinner dance, for which there was precedent, but was in addition to it. The Christmas party was the first social event unrelated to retirement or to other employee achievements for which Respondent paid the cost in full. While Respondent contends that the party was unrelated to the election and was the product of Jorgensen's precampaign recommendation, plus the corporate open-house policy, Respondent clearly was not blind to the relation between the timing of the party and the election, and Respondent drew upon the party in seeking to induce employees to reject union representation. Whether the decision to hold the party was made before or after the date of the election was fixed, clearly it was not made until after Respondent knew that there would be an election, and its position as to the timing of an election insured that the party and the election would not be far apart. I find that by holding the Christmas party and open house Respondent violated Section 8(a)(1) of the Act.[21]

H. *The Alleged Threat by Supervisor Terwillegar*

In early January 1980, Alice Chandler was transferred from one department to another in the plant. At the time of her transfer, her new supervisor, Glen Terwillegar, spoke to her at his desk. Terwillegar told her what the rules were and what was expected of her in his department. According to Chandler, he also told her that, if the Union were in the plant at that time, she probably would have been laid off and that they would not have transferred her.[22] Chandler testified that no one else was present at the time of the conversation and that she was trained in her new department by "a little blonde girl, Kathy."

Terwillegar, who was no longer employed by Respondent at the time of the hearing, did not testify nor was he shown to be unavailable. However, employee Candace Longo, who did not match Chandler's description of Kathy, testified that, as employees were transferred into the department, Terwillegar called on her to train them and that she was present when Terwillegar

[19] *The Zeller Corporation*, 115 NLRB 762 (1956); *Lloyd A. Fry Roofing Company*, 123 NLRB 86 (1959); *Fashion Fair, Inc., etc.*, 157 NLRB 1645 (1966), enfd. as modified 399 F.2d 764 (6th Cir. 1968); *Agawam Food Mart, Inc., et al. d/b/a The Food Mart*, 158 NLRB 1294 (1966), enfd. 386 F.2d 192 (1st Cir. 1967).

[20] See *Western Sample Book and Printing Co., Inc.*, 209 NLRB 384 (1974).

[21] *Hanover House Industries, Inc.*, 233 NLRB 164, 170 (1977).

[22] Chandler testified that she was unsure whether Terwillegar used the word "probably."

talked to Chandler about her transfer. According to Longo, Terwillegar explained to Chandler what her job would be, that Longo would be training her, and what the basic rules and regulations were. Longo's testimony includes the following sequence of questions and answers:

> Q. Did Alice Chandler say anything during this meeting?
>
> A. No.
>
> Q. Did she say anything at all about the transfer?
>
> A. She asked why she was being transferred.
>
> Q. What did Mr. Terwillegar say?
>
> A. He told her that she was being transferred because Rundel was slow, and not because of the Union.
>
> Q. Did she raise the question of the Union, or did he?
>
> A. I don't remember.

Longo testified that she did not hear the subject of the Union discussed in any other way or context in this conversation.

While Longo contradicted Chandler as to who trained her and to her claim that her conversation with Terwillegar was private, the quoted testimony corroborates Chandler that the Union was mentioned. While she could not recall who raised the question of the Union, there was no reason why Terwillegar would have taken pains to point out that Chandler was not being transferred because of the Union unless something was said about it. I conclude that Longo's recollection of this conversation was neither complete nor accurate and I have credited Chandler. I find that at the time of her transfer Terwillegar told Chandler that, if the Union were in the plant at the time, Respondent probably would have laid her off and would not have transferred her, implicitly threatening that Respondent would make less of an effort to preserve employment for employees when work was slack if they were represented by a union, thereby violating Section 8(a)(1) of the Act.[23]

IV. THE REMEDY

Having found that Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As it has been found that Respondent's March 18, 1980, notices undermined the effectiveness of the Board's process and warranted setting aside the March settlement agreement, I shall recommend that the Order include a provision designed to neutralize the impact of the March 18 notices.[24]

Upon the basis of the above findings of fact and the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Gould, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Communications Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees with loss of access to Respondent's officials to discuss complaints and grievances, by telling an employee that she had been denied a merit increase because of the Union, by maintaining and enforcing a rule prohibiting solicitation by employees at any time on company property, by promising and sponsoring a children's Christmas party with gifts, and by threatening employees with layoff in order to discourage them from engaging in union and protected concerted activities, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[25]

The Respondent, Gould, Inc., Plantsville, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promising and sponsoring a children's Christmas party, with gifts, in order to discourage its employees from selecting Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

(b) Maintaining any rule prohibiting solicitation by employees at any time on company property.

(c) Issuing warnings to its employees for violating any rule prohibiting solicitation on company property, in order to discourage its employees from selecting Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

(d) Threatening employees with loss of access to Respondent's officials to discuss complaints and grievances in order to discourage employees from selecting Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

(e) Threatening employees with layoff if they select Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

(f) Posting and/or circulating any notices to employees which modify, alter, or detract from notices posted pursuant to orders or agreements with the National Labor Relations Board.

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[23] *The Buncher Company*, 229 NLRB 217 (1977).

[24] *The Brearley Company*, 163 NLRB 637 (1967); *Arrow Specialties, Inc.*, 177 NLRB 306, enfd. 437 F.2d 522 (8th Cir.).

[25] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(g) Telling employees that they have been denied merit increases because of a union in order to discourage employees from selecting Communications Workers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Rescind the warnings issued to Dorothy Curtis, Marsha Woodtke, and Barbara Symolon issued under a rule which prohibited solicitation by employees on company property, and notify those employees of that action.

(b) Rescind any rules prohibiting solicitation by employees on company property.

(c) Notify its employees, in writing, that it has rescinded the notices which it distributed to employees on March 18, 1980.

(d) Post at its Plantsville, Connecticut, facility copies of the attached notice marked "Appendix."[26] Copies of said notice, on forms provided by the Officer-in-Charge for Subregion 39, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Officer-in-Charge for Subregion 39, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[26] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."